

GOVERNOR'S STATE CONTRACTING REFORM TASK FORCE

Index of Task Force Members Feedback

August 31, 2004

Representative Richard O. Belden

Attorney Lynn Blackwell

Representative Olivia Floren

Mr. Thomas Larsen

Dr. Frederick McKinney

Mr. Michael O'Brien

Mr. Pasquale Pepe

Ms. Meredith Reuben

Commissioner Barbara Waters

Representative Richard O. Belden

Representative Richard O. Belden
14 Keron Drive
Shelton, Ct. 06484

FAX: (203)924-1757

FAX COVER PAGE

DATE: 8/30/04 TIME: 5:30 PM

PLEASE DELILVER THE FOLLOWING PAGES TO: _____

860-713-7255 Sylvia Bugbee

SENDER: R. Belden

WE ARE TRANSMITTING 5 PAGES (INCLUDING THIS
COVER PAGES).

IF YOU DO NOT RECEIVE ALL PAGES PLEASE CALL _____

203 924 1757

Please See my comments on pages 4, 16, 20 and 21
attachees.

DRAFT

Statewide Standards Duties

- Develop statewide standards that apply to all state contracting and procurement processes addressed by this Task Force, including but not limited to, state leases and property transfers, privatization contracts, construction bidding and awards contracts, consultant services contracts, emergency contracts, purchases of goods, services or equipment under the Department of Administrative Services, and purchases of services via a Personal Service Agreement, under the Office of Policy and Management;
- Incorporate guidelines for protest resolution at the agency level into the standards;
- Create administrative rules and minimum standards so that they can be easily modified when a new problem arises, based upon the new procurement and contracting statute, for all types of selections and resulting contracts, and modeled after the Federal Acquisition Regulations (FAR);
- Consider including prequalification and registration or licensing of selected types of contractors, such as commercial property management firms;¹⁵
- Promulgate regulations, where required, to carry out the provisions of the model procurement code;
- Produce a user-friendly, how to manual, called the *State Procurement & Contracting Manual* that outlines the rules, regulations, signing authority and standards for all types of selections and resulting contracts. Each state agency should develop a State Procurement and Contracting Manual following a standard outline as developed by the Board. The Board should develop a standardized format, relying on existing formats that work well. Each agency should develop manuals that follow the established format and meet the requirements of the agency and its various funding sources;
- Develop a monitoring system to ensure agencies are using state contracts and increase agency accountability to do so;
- Develop a process to hold contractors accountable for providing the proper goods and services at the correct prices, in the manner prescribed in their contract. The process should include penalties for non-compliant vendors;
- Ensure state contracting and procurement standards include a systematic approach to maximize the utilization of Small and Minority Business Enterprises in state contracting. Incorporate successful methods employed by state agencies and include in training programs for procurement professionals.
- Develop standards to assess privatization proposals. This includes creating a procedure containing all appropriate steps and reviews required for privatization proposals including the approval process. This Office will develop the process identifying and including all analytical steps, relevant parties and evaluation factors.¹⁶
- Initiate and maintain a continuous improvement process for all agencies of state government based on information obtained through reviews and audits. Consider new purchasing procedures to increase openness of the buying process, such as reverse auctions. Establish an advisory group to include Executive, Legislative and Judicial Branch and Higher Education purchasing personnel to share ideas, discuss issues, institute best practices and continually search for improved procurement methods, for instance, offer vendor debriefings to review bids and offer suggestions to help vendors achieve success with future bids.¹⁷

¹⁵ See DRAFT report, Property Management.

¹⁶ See DRAFT reports, Construction Procedures and Procurement.

¹⁷ See DRAFT report, Procurement.

Advisory group Representative
To advisory group
Municipalities need to be aware
so they can take advantage
of state bidding and procurement
whenever possible
Robb

DRAFT

Culture shift:

Accountability for State Managers

- The State Code of Ethics should provide consequences for those who counsel, authorize or otherwise sanction violations of the Ethics Code (Proposed House Bill 5156-2003 legislative session);
- The State Code of Ethics should require senior management to report suspected violations of the Ethics Code to the State Ethics Commission;
- Promoting ethical behavior in the workplace should be an important criterion in a manager's annual evaluation and an essential factor to qualify for receiving merit increases and promotions;
- Exemplary "ethical role models" should be featured in agency newsletters and public ceremonies;
- Managers must ensure that all employees they supervise understand the ethics and contracting rules; and
- Managers must strive to maintain a workplace environment that encourages discussion of ethics issues without fear of reprisal and must fully support any ethics investigations when called upon.

Guidelines to Restrict Relationships between State Officials and Contractors

- The post-employment restrictions should be expanded to former public officials/state employees who negotiate a covered contract or agreement but resign before it is signed. These individuals should be prohibited from taking any job with the contractor within one year of resigning from state service if they resign less than one year after the contract is signed or they stopped participating in the negotiations. Quasi-public agency directors and members should also be prohibited from seeking or taking any job with the contractor within one year after they cease substantial participation in the negotiations or the contract is signed. (See House Bill 5155);
- State agencies should be prohibited from requesting "gifts to the state" from contractors currently seeking to do business with the agency; *unless part of RFP and bid process*
- State employees should be prohibited from hiring or doing business with a person or business that holds a contract with the employee's state agency;
- State employees and public officials should not accept any meals from any person currently doing business with or seeking to do business with the employee's state agency. (Currently, the gift law allows meals up to \$50 per person per calendar year); and
- All contracts should contain a clause which states that the contractor is aware of, understands, and agrees to comply with the State Code of Ethics, the Business Code of Ethics, and understands that failure to comply can result in termination of the contract. Contractors will be responsible for reimbursing the state for any costs incurred by the state as a result of such termination, delay in completion of the project, and/or the necessity to hire an alternate contractor.

Heighten contractor accountability:

Develop a Code of Ethics for State Contractors

- Prohibit those doing business or seeking to do business with the state from providing gifts, including services and other benefits (as defined in the State Code of Ethics for Public Officials) and for paying for meals incident to meetings held with state employees and public officials. This gift prohibition should be extended to certain family members (i.e. spouse, dependent children);
- Require contractors doing business with the state to file periodic reports listing all "gifts to the State", meals, or other benefits provided to state employees and public officials;
- Prohibit contractors from hiring state employees and public officials in violation of the state post-employment rules;

** Gifts to the state as a part of any bid or RFP Process should be excluded from prohibition.*

Robb

DRAFT

- Prohibit contractors and potential contractors from offering employment to certain family members of state employees and public officials who are in a position to influence a contract award;
- Prohibit contractors from offering outside employment to state employees and public officials which would result in such officials or employees being in violation of the State Ethics Code. (i.e. such outside employment would be a conflict with their current state employment);
- ✱ Prohibit solicitation and donation of campaign contributions by owners and majority shareholders of firms who have, or are seeking to obtain, large state contracts, to candidates for elective office that awards the contract. Consider a limited ban from lobbyists;
- Before the award of a contract, preclude a contractor from soliciting or obtaining from any person any proprietary or source selection information not available to all, regarding the contract award;
- Require contractors to disclose who, if anyone, will receive compensation as a result of the contract award or is being paid to help obtain the contract award;
- General contractors should ensure that its subcontractors are aware of and comply with the Code.
- Authorize the State Ethics Commission to enforce the provisions of Code of Ethics for State Contractors; and
- Require contractors to report to the proper enforcement authority, state employees and public officials who solicit any gifts or rewards from contractors.

Contractor Education Campaign

- Training and information regarding the Code of Ethics, as well as the contracting procedures, should be provided to those doing business with or seeking to do business with the State; and
- Entities seeking to obtain state contracts should be advised of the law regarding public disclosure of information so that they understand, in advance, what information submitted will be available for public inspection.

Deterrence:

Provide Consequences for Not Complying with Procedures

- If affidavits are not filled out properly, the contract should not be awarded until they are complete;
- A contractor who violates the State Ethics Code may be barred for a time from bidding on future state contracts; and
- Contractors who hire former state employees in violation of the post-state employment rules should be subject to severe penalties. For example, the contractor may be fined in an amount equal to the value of the state contract the former employee was involved in; the contractor may be excluded from future bid opportunities.

Provide Stiffer Penalties and Enforcement Mechanisms

- Contractors must agree to submit to the jurisdiction of the State, including state enforcement authorities;
- Authority should be provided to the State Ethics Commission to investigate and levy penalties for failure to provide a complete and accurate affidavit;
- State Ethics Commission should have in-personam jurisdiction over out-of-state contractors by service on the Secretary of State;
- Penalties should include the ability to void the contract for ethical violations and make the offending contractor liable for damages to the state resulting from such cancellation;

This is difficult Constitutional issue, who knows who is seeking to obtain a contract.

Work Group Members and Task Force Staff

Construction Procedures work group:

H. James Boice, Co-chair, Designee
 David J. O'Hearn, Co-chair, Designee
 Dr. Martin Anderson
 Lynn Blackwell, Esq.
 Oz Griebel, Esq.
 Robert G. Jaekle
 Kevin P. Johnston
 Phillip Koeniger
 Lt. Col. Gerald Lukowski
 Michael J. O'Brien
 Amalia Vazquez Bzdyra, Esq.

Procurement work group:

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 Valerie Joyner
 Dr. Frederick McKinney
 Rep. James O'Rourke, III
 Meredith Reuben

Leasing work group:

Shane Mallory, Chair, Designee
 Richard Allen
 Hugh Cox
 Pasquale Pepe, Esq.

Personal Services Agreement work group:

Marc S. Ryan, Esq., Chair
 Gareth Bye, Esq., Chair, Designee
 Valerie Joyner
 James Neill, Esq.
 John Pavia, Esq.
 Senator Andrew Roraback

Investigations Enforcement and Compliance work group:

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 Paul Murray, Esq., Chair, Designee
 John Russotto, Esq., Chair, Designee
 Rep. Richard Belden
 Robert G. Jaekle
 Kevin P. Johnston
 Kenneth Fargnoli
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 Pasquale Pepe, Esq.
 Donald Shubert, Esq.
 Carlos Velez

Property Management work group:

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 Richard Allen
 Lynn Blackwell, Esq.
 Tina Costanzo
 Rep. Livvy Floren

Ethics and Integrity work group:

Rachel Rubin, Esq., Chair
 Robert G. Jaekle
 Kevin P. Johnston
 Thomas Larsen
 Lt. Col. Gerald Lukowski
 Devin Marquez, Esq.
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 Michael J. O'Brien
 Rep. James O'Rourke, III
 Simone Cristofori

Task Force staff:

Sylvia Bugbee, DPW Executive Secretary
 Raeanne Curtis, DPW Chief of Staff
 Anna Ficeto, DPW Director of Legislation, Regulations & Communications
 Nuala Forde, Department of Information Technology
 Richard Lopes, Legislative Aide to Senator DeFronzo
 Doug Moore, DPW Legislative Program Manager
 Ann Nichols, DPW Director of Administration
 Pat Nolan, DPW Communications Specialist

*Amalia also
served on this
Task Force*

Attorney Lynn Blackwell

Bugbee, Sylvia

From: Blackwell, Lynn [Lynn.Blackwell@po.state.ct.us]
Sent: Monday, August 30, 2004 3:02 PM
To: Bugbee, Sylvia
Subject: RE: Final Draft for review and comments

My comments are attached - in the format requested. Thank you and the Chairs for the incredible effort.

Lynn

-----Original Message-----

From: Bugbee, Sylvia [mailto:Sylvia.Bugbee@po.state.ct.us]
Sent: Monday, August 30, 2004 8:38 AM
To: Thomas Larsen; Amalia Vazquez-Bzdyra; Andrew Roraback; Ann Rose Morello (Lt. Col. Lukowski's asst.); Barbara Waters; Christopher Morano; Donald Shubert; Dr. Fred McKinney; Gareth Bye (Marc Ryan's designee); Hugh Cox; James O'Rourke; John Pavia; Kevin Johnston; Livvy Floren; Lt. Col. Gerald Lukowski; Lynn Blackwell; Marc Ryan; Mary Alice Hughes (Rep. O'Rourke's asst.); Meredith Reuben; Michael O'Brien; Neil Beup (Oz Griebel's asst.); Oz Griebel; Pasquale Pepe; Philip Koeniger; Rachel Rubin; Richard Belden; Robert Jaekle; Rosemary Budlong (Chris Morano's asst.); Stephen Korta
Cc: Senator DeFronzo; Anthony Lazzaro - OPM 2nd designee; Curtis, Raeanne V; Fleming, James T; Hart, Holly; Heap, Marjorie; Holmes, Jonathan; Jim Boice; Jim Passier, DAS Designee; John Russotto (Co-chair designee for Chris Morano); Mallory, Shane; Moore, Doug; Nancy Laraia (Jim Boice's assistant); Nichols, Ann; Ohearn, David; Paul Murray (Co-chair designee for Chris Morano); Bugbee, Sylvia
Subject: Final Draft for review and comments

This message is being sent on behalf of the Co-Chairs of the Governor's Contract Review Task Force:

The co-chairs are pleased to send you the Task Force draft final report for your comments. Once again, we want to commend the chairs for the energy and talent they brought to this process. Please note that all the work group reports will be included in the appendix of the final report. We invite all task force members to respond and request that you provide comments in a format that will facilitate editing. It would be helpful if you could comment electronically directly on the draft in RED, indicate your name on the face sheet, and send your edited version back to the co-chairs with copies to: Sylvia Bugbee (sylvia.bugbee@po.state.ct.us) and Ann Nichols (ann.nichols@po.state.ct.us). If you prefer to provide written comments, please fax them to: (860) 713-7255. We would appreciate receiving your comments as soon as possible but by close of business (4:00 p.m.) today **at the latest**. The report will be edited based on your comments to the extent possible. We look forward to hearing from you.

Sylvia Bugbee, Executive Secretary
Office of the Deputy Commissioner
Department of Public Works
165 Capitol Ave., Room 473B
Hartford, CT 06106
TEL: (860) 713-5854 FAX: (860) 713-5255

Revision # 13

D R A F T

State Contracting Reform Task Force

Final Report

September 1, 2004

COMMENTS BY LYNN C. BLACKWELL

The Final Report is a very accurate summarization of the recommendations of the two work groups on which I served. I appreciate the work that went into developing the report from the task force submittals. Given the short timeframe, the resulting work is sound and substantive. My comments are few.

See pages 10 and 21 for minor revisions for purposes of clarification.

On Page 22, I do not feel that it is appropriate to give judges the authority to affect pensions for the following reasons:

- Pension benefits are earned over time and are the sum result of an entire career.
- Pensions often go to the benefit of innocent individuals, such as a spouse or lifelong dependant such as disabled children
- There are other ways to exact appropriate punishments for ethical violations, and those are enumerated in the draft -- such as penalties, treble damages, and removal from state service.
- Judges are highly unlikely to exercise such authority for the reasons stated.

In light of my comments, I would prefer deletion of that item, but certainly support the report in full, regardless.

I appreciate the opportunity to have served and would be pleased and honored to serve on the subsequent workgroup for further work.

Lynn C. Blackwell

Submitted by:

Senator Donald J. DeFronzo, Co-chair
Chairman, Government Administration and Elections
Committee

James T. Fleming, Co-chair
Commissioner, Department of Public Works

DRAFT

Recommendation # 1:

**ADOPT A UNIFORM PROCUREMENT & CONTRACT CODE
AND
CREATE A CONTRACT STANDARDS & PROPERTY REVIEW BOARD**

Part I: ADOPT A UNIFORM PROCUREMENT & CONTRACT CODE

BACKGROUND

The Connecticut General Statutes mandate differing degrees of rules, regulations, standards, and oversight for the various state agencies, offices, institutions, committees, and municipalities that have the statutory responsibility for bidding and selections, and the resulting contracts. In addition, various state agencies have procedures that have evolved over the years and are often not set forth in statutes or regulations. Consequently, there are no universal minimum statutory requirements applicable to all contracting entities across the state for the following processes and procedures:

- contract solicitations;
- consultant and contractor selection;
- contract oversight;
- bidding and awards;
- appeal processes;
- process turn around time duration

As the Construction work group states, there are multiple construction-related statutes with frequent and well-intended additions, revisions, deletions, and exemptions that produce a patchwork of reforms to specific statutes without addressing the need for a global fix.³ The Procurement work group also noted that purchasing procedures such as bid posting, bidder notification, documents and evaluation procedures vary by agency. This inconsistency causes confusion and makes it difficult for vendors to submit a successful bid response.⁴ The Property Management work group indicates that the lack of a standard method of contracting with property management firms can make it difficult for the state to track this data. Different contract types for providing the same service may lead to discrepancies that could be to the state's disadvantage, particularly since many of the same firms have contracts with many different agencies.⁵ The need for templates for repetitive types of contracts is echoed in other reports.

The Personal Service Agreement work group noted the lack of such standardization wastes time and staff resources, causes delays, limits productivity, and drives up costs. Moreover, the strength of contract language is tested through use, and the unknown strength of differing contracts increases the risks to the agency and the State. Standardization can also expedite the review and approval of contracts, thereby making the system more efficient. With a more efficient system in place, agencies may be less likely to look for loopholes, alternative procurement mechanisms, or "carve outs" as a means to avoid using PSAs

³ See DRAFT report, Construction Procedures.

⁴ See DRAFT report, Procurement.

⁵ See DRAFT report, Property Management

(when required). ⁶ [It] Lack of standardization also thwarts our efforts to have a transparent, easily-understood process.

DRAFT

Despite this, it is clear that many agencies have made a significant effort in their respective areas to revise their procedures to reflect best practices. For example, the Construction Procedures work group located a summary of state procurement statutes compiled by the American Council of Engineering Companies.⁷ This document suggests that the Department of Public Works' current practices for contracting with design professionals are similar to the practices in other states. During the last two years, Office of Policy and Management staff have been working on a major update and revision of their draft guidelines, *Personal Service Agreements: Standards and Procedures*; they recently sought input from state agencies and intend to issue this in the near future.⁸

The Task Force believes the next step is to achieve statewide consistency. The following language was prepared by the State of Oregon in enacting a Public Contracting Code.⁹ It reflects the Task Force's thinking regarding the need and rationale to adopt such a code in Connecticut.

A sound and responsive public contracting system should:

- (1) Simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards.
- (2) Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.
- (3) Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within this state.
- (4) Clearly identify rules and policies that implement each of the legislatively mandated socioeconomic programs that overlay public contracting and accompany the expenditure of public funds.
- (5) Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement. In public procurement, . . . meaningful competition may be obtained by evaluation of performance factors as well as pricing in arriving at best value.
- (6) Provide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted.

MODELS

The Construction Procedures work group conducted some research and located models, such as the American Bar Association (ABA) model procurement code for state and local governments that is used by many state and local government purchasing professionals.¹⁰ It addresses the above issues and more.

⁶ See DRAFT report, Procurement.

⁷ *Summary of State Procurement Statutes*, American Council of Engineering Companies (ACEC), December 2001.

⁸ See DRAFT report, Personal Services Agreement.

⁹ For more information, see: irmd.das.state.or.us/DAS/PFSS/SPO/docs/ORS_Cross_Map%20279.005%20to%20279.116.doc, Matrix of expansion of ABA MPC approach, State of Oregon.

¹⁰ For more information, see: <http://www.acec.org/advocacy/doc/mpcfinal.doc>, *Steering Committee Final Draft-- The Model Procurement Code Revision Project, A Joint Program to Improve State and Local Procurement*, The American Bar Association Section for Public Contract Law and Section of State and Local Government Law, April 2000.

DRAFT

- Prohibit contractors and potential contractors from offering employment to certain family members of state employees and public officials who are in a position to influence a contract award;
- Prohibit contractors from offering outside employment to state employees and public officials which would result in such officials or employees being in violation of the State Ethics Code. (i.e. such outside employment would be a conflict with their current state employment);
- Prohibit [moved text] owners and majority shareholders of firms who have, or are seeking to obtain, large state contracts, from engaging in solicitation and making campaign donations [of campaign contributions by] to candidates for elective office [that awards the contract]. Consider a limited ban on campaign contributions and solicitations by [from] administrative lobbyists who register for the purpose of influencing contract awards;
- Before the award of a contract, preclude a contractor from soliciting or obtaining from any person any proprietary or source selection information not available to all, regarding the contract award;
- Require contractors to disclose who, if anyone, will receive compensation as a result of the contract award or is being paid to help obtain the contract award;
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- Penalties should include the ability to void the contract for ethical violations and make the offending contractor liable for damages to the state resulting from such cancellation;

D R A F T

- In sentencing for proceedings for serious violations of the Ethics Code (i.e. criminal violations), afford Judges discretionary authority to revoke all or part of State pension benefits. (See proposed Corrupt Officials Act-2003 legislative session);
- Penalties for any violation of the Ethics Code should include the option to recover the full amount of any financial gain with the ability to refer the matter to the Attorney General to recoup treble damages. (This financial gain would include the profit earned in a state contract which is found to have been awarded in violation of any contracting rule.);
- State employees that disclose confidential information which results in the need to re-bid should be liable for penalties assessed by the Ethics Commission including the costs to the state of re-bidding;
- Whistleblower protection should be extended to prohibit retaliatory actions taken by private contractors against state or private employees for contacting the proper enforcement authority for reporting possible violations. Whistleblowers should be immune from civil liability if information is provided in good faith; and
- Removal from state service should be an available penalty for serious violations of the Code of Ethics.

Education:

Communication

- Each state agency should designate an ethics officer to serve as a liaison to the State Ethics Commission. Such officer shall field questions and seek guidance from the Commission, disseminate current/up-to-date information to agency employees in a timely manner (including explanation of recent enforcement actions, advisory opinions, statutory changes);
- State employees and public officials and contractors should receive a one-page summary that would outline broad ethical issues (gifts, outside employment, use of public position for financial gain, revolving door rules);
- Contact information, including phone numbers and emails, should be provided to all employees so that they know where and how to get guidance;
- Prior to accepting employment with the State, all prospective employees should be given a guide to the Code of Ethics. Thereafter, each new employee should receive a copy of the Code of Ethics, including information on where to go for questions and guidance. As a term of employment, each prospective employee should sign a statement acknowledging receipt of a copy of the Code and state that they have read and agree to comply with it; and
- In order to identify restricted donors under the Ethics Code's gift rules, state agencies should be required to post and periodically update a list of businesses currently doing business with or seeking to do business with the agency. Information should be provided as to how to access an up-to-date list of registered lobbyists.

Training

- Ethics training for potential and current state contractors should be provided;
- Ethics training for all state agencies should occur on a regular basis and should include a combination of written communication, online and/or video training, and face-to-face communication. Senior agency personnel should fully support the training with their presence and participation; and

Representative Olivia Floren

Bugbee, Sylvia

From: Olivia Floren [olivia@dcfcap.com]
Sent: Monday, August 30, 2004 10:06 AM
To: Bugbee, Sylvia
Subject: Re: [Spam] Final Draft for review and comments

thank you so much for all your hard work. looks great to me. — Livvy

— Original Message —

From: Bugbee, Sylvia
To: Thomas Larsen ; Amalia Vazquez-Bzdyra ; Andrew Roraback ; Ann Rose Morello (Lt. Col. Lukowski's asst) ; Barbara Waters ; Christopher Morano ; Donald Shubert ; Dr. Fred McKinney ; Gareth Bye (Marc Ryan's designee) ; Hugh Cox ; James O'Rourke ; John Pavia ; Kevin Johnston ; Livvy Floren ; Lt. Col. Gerald Lukowski ; Lynn Blackwell ; Marc Ryan ; Mary Alice Hughes (Rep. O'Rourke's asst.) ; Meredith Reuben ; Michael O'Brien ; Neil Beup (Oz Griebel's asst.) ; Oz Griebel ; Pasquale Pepe ; Philip Koeniger ; Rachel Rubin ; Richard Belden ; Robert Jaekle ; Rosemary Budlong (Chris Morano's asst.) ; Stephen Korta
Cc: Senator DeFronzo ; Anthony Lazzaro - OPM 2nd designee ; Curtis, Raeanne V ; Fleming, James T ; Hart, Holly ; Heap, Marjorie ; Holmes, Jonathan ; Jim Boice ; Jim Passier, DAS Designee ; John Russotto (Co-chair designee for Chris Morano) ; Mallory, Shane ; Moore, Doug ; Nancy Laraia (Jim Boice's assistant) ; Nichols, Ann ; Ohearn, David ; Paul Murray (Co-chair designee for Chris Morano) ; Bugbee, Sylvia
Sent: Monday, August 30, 2004 6:38 AM
Subject: [Spam] Final Draft for review and comments

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Sylvia Bugbee, Executive Secretary
Office of the Deputy Commissioner
Department of Public Works
165 Capitol Ave., Room 473B
Hartford, CT 06106
TEL: (860) 713-5854 FAX: (860) 713-5255

Mr. Thomas Larsen

Bugbee, Sylvia

From: tom larsen [trlarsen@larsen-associates.com]
Sent: Monday, August 30, 2004 3:25 PM
To: donald.defronzo@po.state.ct.us; Fleming, James T
Cc: Nichols, Ann; Bugbee, Sylvia
Subject: RE: Final Draft for review and comments

Commissioner Flemming and Senator DeFronzo,
Sorry for the late comments.
Tom Larsen

Tom Larsen, AIA
Larsen Associates LLC
219 High Street
Milford, CT 06460-3250
Phone: 203.878.8587
Fax: 203.647.7116

-----Original Message-----

From: Bugbee, Sylvia [mailto:Sylvia.Bugbee@po.state.ct.us]
Sent: Monday, August 30, 2004 8:38 AM
To: Thomas Larsen; Amalia Vazquez-Bzdyra; Andrew Roraback; Ann Rose Morello (Lt. Col. Lukowski's asst); Barbara Waters; Christopher Morano; Donald Shubert; Dr. Fred McKinney; Gareth Bye (Marc Ryan's designee); Hugh Cox; James O'Rourke; John Pavia; Kevin Johnston; Livvy Floren; Lt. Col. Gerald Lukowski; Lynn Blackwell; Marc Ryan; Mary Alice Hughes (Rep. O'Rourke's asst.); Meredith Reuben; Michael O'Brien; Neil Beup (Oz Griebel's asst.); Oz Griebel; Pasquale Pepe; Philip Koeniger; Rachel Rubin; Richard Belden; Robert Jaekle; Rosemary Budlong (Chris Morano's asst.); Stephen Korta
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Sylvia Bugbee, Executive Secretary
Office of the Deputy Commissioner
Department of Public Works
165 Capitol Ave., Room 473B
Hartford, CT 06106
TEL: (860) 713-5854 FAX: (860) 713-5255

DRAFT

Culture shift:

Accountability for State Managers

- The State Code of Ethics should provide consequences for those who counsel, authorize or otherwise sanction violations of the Ethics Code (Proposed House Bill 5156-2003 legislative session);
- The State Code of Ethics should require senior management to report suspected violations of the Ethics Code to the State Ethics Commission;
- Promoting ethical behavior in the workplace should be an important criterion in a manager's annual evaluation and an essential factor to qualify for receiving merit increases and promotions;
- Exemplary "ethical role models" should be featured in agency newsletters and public ceremonies; Furthermore, ethical violations with penalties should also be broadcasted – a policy of name and shame (if you have a "upside approach (ethical role models)" with no downside approach (dismissal, sanctions and/or loss of pension) the state sends the message that while paying attention to ethics is important nothing will happen to you leading to cynicism both in the public and government)
- Managers must ensure that all employees they supervise understand the ethics and contracting rules; and
- Managers must strive to maintain a workplace environment that encourages discussion of ethics issues without fear of reprisal and must fully support any ethics investigations when called upon.

Guidelines to Restrict Relationships between State Officials and Contractors

- The post-employment restrictions should be expanded to former public officials/state employees who negotiate a covered contract or agreement but resign before it is signed. These individuals should be prohibited from taking any job with the contractor within one year of resigning from state service if they resign less than one year after the contract is signed or they stopped participating in the negotiations. Quasi-public agency directors and members should also be prohibited from seeking or taking any job with the contractor within one year after they cease substantial participation in the negotiations or the contract is signed. (See House Bill 5155);
- State agencies should be prohibited from requesting "gifts to the state" from contractors currently seeking to do business with the agency;
- State employees should be prohibited from hiring or doing business with a person or business that holds a contract with the employee's state agency;
- State employees and public officials should not accept any meals from any person currently doing business with or seeking to do business with the employee's state agency. (Currently, the gift law allows meals up to \$50 per person per calendar year); and
- All contracts should contain a clause which states that the contractor is aware of, understands, and agrees to comply with the State Code of Ethics, the Business Code of Ethics, and understands that failure to comply can result in termination of the contract. Contractors will be responsible for reimbursing the state for any costs incurred by the state as a result of such termination, delay in completion of the project, and/or the necessity to hire an alternate contractor.

Heighten contractor accountability:

Develop a Code of Ethics for State Contractors

- Prohibit those doing business or seeking to do business with the state from providing gifts, including services and other benefits (as defined in the State Code of Ethics for Public Officials) and for paying for meals incident to meetings held with state employees and public officials. This gift prohibition should be extended to certain family members (i.e. spouse, dependent children);

- State Ethics Commission should have in-personam jurisdiction over out-of-state contractors by service on the Secretary of State;
- Penalties should include the ability to void the contract for ethical violations and make the offending contractor liable for damages to the state resulting from such cancellation;

D R A F T

- In sentencing for proceedings for serious violations of the Ethics Code (i.e. criminal violations), afford Judges discretionary authority to revoke all or part of State pension benefits. (See proposed Corrupt Officials Act-2003 legislative session);
- Penalties for any violation of the Ethics Code should include the option to recover the full amount of any financial gain with the ability to refer the matter to the Attorney General to recoup treble damages. (This financial gain would include the profit earned in a state contract which is found to have been awarded in violation of any contracting rule.); does this also apply to the State Employees – it should.
- State employees that disclose confidential information which results in the need to re-bid should be liable for penalties assessed by the Ethics Commission including the costs to the state of re-bidding;
- Whistleblower protection should be extended to prohibit retaliatory actions taken by private contractors against state or private employees for contacting the proper enforcement authority for reporting possible violations. Whistleblowers should be immune from civil liability if information is provided in good faith; and
- Removal from state service should be an available penalty for serious violations of the Code of Ethics.

Education:

Communication

- Each state agency should designate an ethics officer to serve as a liaison to the State Ethics Commission. Such officer shall field questions and seek guidance from the Commission, disseminate current/up-to-date information to agency employees in a timely manner (including explanation of recent enforcement actions, advisory opinions, statutory changes);
- State employees and public officials and contractors should receive a one-page summary that would outline broad ethical issues (gifts, outside employment, use of public position for financial gain, revolving door rules);
- Contact information, including phone numbers and emails, should be provided to all employees so that they know where and how to get guidance;
- Prior to accepting employment with the State, all prospective employees should be given a guide to the Code of Ethics. Thereafter, each new employee should receive a copy of the Code of Ethics, including information on where to go for questions and guidance. As a term of employment, each prospective employee should sign a statement acknowledging receipt of a copy of the Code and state that they have read and agree to comply with it; and
- In order to identify restricted donors under the Ethics Code's gift rules, state agencies should be required to post and periodically update a list of businesses currently doing business with or seeking to do business with the agency. Information should be provided as to how to access an up-to-date list of registered lobbyists.

Training

- Ethics training for potential and current state contractors should be provided;

Dr. Frederick McKinney

Bugbee, Sylvia

From: Dr. Fred [fmckinney@cmsdc.org]
Sent: Monday, August 30, 2004 3:12 PM
To: Bugbee, Sylvia; Nichols, Ann
Cc: 'Senator DeFronzo'; Fleming, James T
Subject: RE: Final Draft for review and comments

Dear Senator DeFronzo and Commissioner Fleming,

By in large I think the report accurately reflects what was discussed in our committee on Ethics and Procurement. However, the one thing missing in my view is any specific discussion of the problem or the recommendations we discussed regarding improvements in the State's small, minority and women owned business program. Granted that many of the changes we are recommending should go some way to level the playing field, but I see the omission of any discussion of the recommendations that were voted on in the Procurement Sub-Committee to review the State's process of certifying MWBEs as a material oversight. We also agreed at the committee level to increase the MWBE goal from 25 percent to 30 percent. We also agreed to look into separating the small business goal from the minority business goal and that this separation would make it possible for the state to achieve greater diversity among vendors. While I would like to see these as part of the report, I understand the desire not to be too specific, but not to address them at all is asking too much. I would be happy to assist in editing if such recommendations will be considered.

In terms of some minimal changes that need to be addressed:

1. Page 12, 3rd paragraph, last sentence. The term MBE for minority business needs to be included along with SBE and WBE.
2. Page 14, final paragraph, last bullet item, members of the CSRRB, should also have knowledge of supplier diversity and small business development.
3. Page 23, third bullet, the term MBE should be included with WBE and SBE.

Respectfully submitted,

Fred McKinney

cc. Sylvia Bugbee and Ann Nichols

-----Original Message-----

From: Bugbee, Sylvia [mailto:Sylvia.Bugbee@po.state.ct.us]
Sent: Monday, August 30, 2004 8:38 AM
To: Thomas Larsen; Amalia Vazquez-Bzdyra; Andrew Roraback; Ann Rose Morello (Lt. Col. Lukowski's asst.); Barbara Waters; Christopher Morano; Donald Shubert; Dr. Fred McKinney; Gareth Bye (Marc Ryan's designee); Hugh Cox; James O'Rourke; John Pavia; Kevin Johnston; Livvy Floren; Lt. Col. Gerald Lukowski; Lynn Blackwell; Marc Ryan; Mary Alice Hughes (Rep. O'Rourke's asst.); Meredith Reuben; Michael O'Brien; Neil Beup (Oz Griebel's asst.); Oz Griebel; Pasquale Pepe; Philip Koeniger; Rachel Rubin; Richard Belden; Robert Jaekle; Rosemary Budlong (Chris Morano's asst.); Stephen Korta
Cc: Senator DeFronzo; Anthony Lazzaro - OPM 2nd designee; Curtis, Raeanne V; Fleming, James T; Hart, Holly; Heap, Marjorie; Holmes, Jonathan; Jim Boice; Jim Passier, DAS Designee; John Russotto (Co-chair designee for Chris Morano); Mallory, Shane; Moore, Doug; Nancy Laraia (Jim Boice's assistant); Nichols, Ann; Ohearn, David; Paul Murray (Co-chair designee for Chris Morano); Bugbee, Sylvia
Subject: Final Draft for review and comments

9/1/04

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DRAFT

The ABA model contains 12 articles that cover broad categories of the contracting process. Articles 1-10 cover basic policies for procurement of supplies, services, construction; management & disposal of supplies; and legal remedies. Article 11 provides socioeconomic policies and administrative procedures for assisting small and disadvantaged businesses. Article 12 establishes ethics standards with sanctions for public officials and contractors, applicable to all participants in the procurement process; these include conflicts of interest, gratuities and kickbacks, contingent fees and misuse of confidential information. Many of these are directly relevant to the Task Force recommendations.

The model also includes many of the basic tenets CT state agencies are already following, such as using competitive sealed bidding as the preferred method for contracting but authorizing competitive sealed proposals for designated types of services. There are provisions to address some areas of potential vulnerability (e.g. requirements for developing, monitoring and using specifications to maximize competition, competitive awards for architects and engineers, a mechanism for resolution of disputes in regard to solicitation and awards, contract performance, debarment or suspension). Similar principles are embodied in the Federal Acquisition Regulations (FAR) in great detail and many states have adopted this model.¹¹

These models are designed to foster open and fair competition. They provide for flexibility within certain parameters and they address multiple methods of selection, such as competitive sealed bids, competitive requests for proposals, small purchases, emergency procurements, architecture/engineering/ consulting services and special procurements. They generally outline steps, approvals, guidance for time frames, ethics provisions, SBE/WBE participation, compliance oversight and enforcement; some include forms as well.

PART I RECOMMENDATION

The Task Force recommends the following:

- A follow-up work group will conduct a comprehensive review of all existing state procurement and contract statutes;
- This group will explore the feasibility of adopting one of the existing models, or a hybrid, as a framework for state contracts;
- They will develop a new, unified *State Procurement & Contracting Statute* that consolidates the existing statutes. It will address all types of selections, procurements, and resulting contracts applicable to all state entities and municipalities and it will meet the objectives of consistency, transparency, expediency, vendor compliance and accountability among all state agencies. This would include, but are not limited to, the following:
 1. state leases and property transfers
 2. privatization contracts
 3. major construction bidding and awards contracts
 4. formal consultant contracts
 5. any proposed fast track project

¹¹ INSERT FAR LINK

DRAFT

Part II: **CREATE A CONTRACT STANDARDS & PROPERTY REVIEW BOARD****BACKGROUND**

The Task Force believes that a single body must be dedicated to the development and administration of a unified procurement code. Articles 1 and 2 in the American Bar Association code, for example, set forth organizational concepts for establishing procurement policy and conducting operations, provide exemptions from central procurement, authorize creation of a Procurement Advisory Council to suggest reforms and improvements and the creation of a Procurement Institute to train personnel. This parallels several of the work groups' recommendations concern the establishment of such a body.

The work groups' perception of the role of such a body varied greatly. However, on one point they were consistent: they shared a similar concern that creating a board that would approve all major contracts would create unnecessary and excessive delays. This, in turn, would diminish service to customers and clients. There are other repercussions from a lengthened process, including increased pressure for clients to seek an exemption from what they perceive as a burdensome process. All the work groups indicated, and the Task Force concurred, that integrity and transparency must be built into the selection system from the outset and that problems require a thoughtful analysis and systemic solutions.

The Task Force did not see these interventions as mutually exclusive, as outlined below in our recommendations.

PART II RECOMMENDATION

The Task Force recommends the following:

Membership

- The Contract Standards and Property Review Board (CSPRB) shall report directly to the Governor and the Legislature;
- The CSPRB should be comprised of executive and legislatively appointed members. The chairperson of the board would be nominated by the Governor and confirmed by one house of the legislature as is the current process for confirmation of a commissioner. The Executive Director of the Contract Standards Office is an -officio member of the Board;
- Board members shall serve staggered terms to ensure continuity of membership;
- The State Property Review Board will be reconstituted to the CSPRB; and
- All members will have substantial knowledge and demonstrated experience with (a) procurement; (b) request for proposals; (c) contract negotiation; (d) contract drafting; (e) contract law or business law; (f) business insurance and bonding; (g) contract risk assessment; (h) business ethics; and (i) federal and state statutes, policies, and regulations.¹²

¹² See DRAFT report, Personal Services Agreement.

- Training should include the rules regarding awarding state contracts, including the restrictions on communications during the contract award process.

D R A F T

Recommendation # 3:

IMPROVE PROFESSIONAL DEVELOPMENT OPPORTUNITIES FOR STATE EMPLOYEES

BACKGROUND

Virtually every work group identified the lack of uniform and consistent training for public officials, state employees, current and prospective contractors and vendors as a weakness in our current system. They cited the lack of awareness of each party's respective roles and responsibilities in critical areas, such as ethics and procurement methods, as a problem. Several work groups also raised the issue of mistakes resulting from inadequate knowledge or confusion, which cause friction and are time-consuming to rectify.

RECOMMENDATION

The Task Force recommends the following:

- A training institute should be created under the auspices of the Contract Standards and Property Review Board. This can be done in conjunction with other States, the Federal Government, municipalities or other resources;
- The institute will develop training and professional development opportunities for public officials and staff charged with procurement responsibilities. The program will educate those involved in the procurement process on proper purchasing procedures with an emphasis on ethics, fairness and consistency. This would apply to anyone engaged in buying, purchasing, renting, leasing or otherwise acquiring any supplies, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration;²¹
- Training will include orientation to applicable ethics standards and accountability expectations, as well as SBE and WBE contracting goals;
- The institute will support joint training initiatives with the Department of Administrative Services, the Ethics Commission as well as other state agencies, such as providing ethics training to all state employees and to potential vendors as a requirement of participation in the new DAS prequalification system;²²
- It is recognized that procurement is a complex process and that the procurement field continually changes. This institute should work jointly with the Standards Division to conduct and track research on new and existing methods of procurement and training up-dates should be conducted at regular intervals;
- It is also recognized that people have different learning styles and training in a vacuum has limited value, particularly didactic training. The training should be designed to accommodate multiple

²¹ <http://www.acec.org/advocacy/doc/mpcfinal.doc>, page 14.

²² See DRAFT report, Investigations, Compliance and Enforcement.

Mr. Michael O'Brien

Bugbee, Sylvia

From: Michael O'Brien [michael.obrien@po.state.ct.us]
Sent: Monday, August 30, 2004 4:55 PM
To: Nichols, Ann
Cc: Bugbee, Sylvia
Subject: Task Force Report



FinalReportDraftAug26

04Rev# 13... I made one comment on Recommendation #2 under Deterrence. Please forward to the co-chairs as I don't have their e-mails. Thank you and thanks for the reference to Privatization Proposal evaluations.

DRAFT

- In sentencing for proceedings for serious violations of the Ethics Code (i.e. criminal violations), afford Judges discretionary authority to revoke all or part of State pension benefits. (See proposed Corrupt Officials Act-2003 legislative session); I still have a little heartburn with this unless it makes a distinction to a high level state official vs a rank and file employee with collective bargaining rights. It may need to be negotiated with SEBAC if it is a change to the pension agreement. If there is a damage to be repaid, perhaps part of someone's pension could be attached until the damage was paid.
- Penalties for any violation of the Ethics Code should include the option to recover the full amount of any financial gain with the ability to refer the matter to the Attorney General to recoup treble damages. (This financial gain would include the profit earned in a state contract which is found to have been awarded in violation of any contracting rule.);
- State employees that disclose confidential information which results in the need to re-bid should be liable for penalties assessed by the Ethics Commission including the costs to the state of re-bidding;
- Whistleblower protection should be extended to prohibit retaliatory actions taken by private contractors against state or private employees for contacting the proper enforcement authority for reporting possible violations. Whistleblowers should be immune from civil liability if information is provided in good faith; and
- Removal from state service should be an available penalty for serious violations of the Code of Ethics.

Education:

Communication

- Each state agency should designate an ethics officer to serve as a liaison to the State Ethics Commission. Such officer shall field questions and seek guidance from the Commission, disseminate current/up-to-date information to agency employees in a timely manner (including explanation of recent enforcement actions, advisory opinions, statutory changes);
- State employees and public officials and contractors should receive a one-page summary that would outline broad ethical issues (gifts, outside employment, use of public position for financial gain, revolving door rules);
- Contact information, including phone numbers and emails, should be provided to all employees so that they know where and how to get guidance;
- Prior to accepting employment with the State, all prospective employees should be given a guide to the Code of Ethics. Thereafter, each new employee should receive a copy of the Code of Ethics, including information on where to go for questions and guidance. As a term of employment, each prospective employee should sign a statement acknowledging receipt of a copy of the Code and state that they have read and agree to comply with it; and
- In order to identify restricted donors under the Ethics Code's gift rules, state agencies should be required to post and periodically update a list of businesses currently doing business with or seeking to do business with the agency. Information should be provided as to how to access an up-to-date list of registered lobbyists.

Training

- Ethics training for potential and current state contractors should be provided;
- Ethics training for all state agencies should occur on a regular basis and should include a combination of written communication, online and/or video training, and face-to-face

Mr. Pasquale Pepe

Bugbee, Sylvia

From: Anna Candelario [anna.candelario@po.state.ct.us]
Sent: Monday, August 30, 2004 1:17 PM
To: Fleming, James T; DeFronzo@senatedems.state.ct.us
Cc: Bugbee, Sylvia; Nichols, Ann
Subject: Pasquale Pepe's comments on State Contracting Reform Task Force "Draft" Final Report



Comments to Draft

(9-1-04) Tas... On behalf of Pasquale Pepe, I am forwarding a copy of his comments relative to the State Contracting Reform Task Force "Draft" Final Report dated September 1, 2004.

Thank you.

Anna Candelario
Executive Secretary
STATE PROPERTIES REVIEW BOARD
(860) 713-6404

TO: State Contracting Reform Task Force

FROM: Pasquale A. Pepe, Committee Member

DATE: August 30, 2004

SUBJECT: STATE CONTRACTING REFORM TASK FORCE "DRAFT" FINAL REPORT
DATED SEPTEMBER 1, 2004

It is not feasible to provide a credible and comprehensive review of the State Contracting Reform Task Force Draft Final Report within five (5+) hours of its receipt. However, the following can be regarded as general and major issues of concern:

1. The proposed limitation of the State Legislatures prerogatives with reference to enact special legislation is a diminution of its legislative function.
2. The absence of third party review of large State Contracts prior to executing such Contracts has the potential to expose the State to imprudent decisions and substantial contractor claims if such contracts are suspended by the Contract Standards Properties Review Board, as proposed.
3. Presently, the State Properties Review Board's appointing authority is the State Legislature.
The recommendation to transfer appointment authority to the Executive Branch creates a conflict of interest since both Board Chairman and Commissioners would be appointed by the same entity. This creates a perception that those appointed to enter into Contracts and review Contracts are not fully independent of one another.
4. The reconstitution of the State Properties Review Board into a Contract Standards Properties Review Board (CSPRB), blurs the functions of an independent review board with a single body dedicated to the promulgation of standards.
5. CSPRB promulgation of municipal procurement standards and/or codes infringes upon local control.

6. CSPRB functions of developing, administering a procurement code and hearing vendor appeals is counter to an independent review function.
7. The creation of CSPRB will obfuscate agency responsibility in the procurement process.

In summary, the report increases ethical and criminal penalties for violations of statute in the contracting process, but does not expand third party contract review, the lack of which allowed corruption in the awarding and administration of Contracts.

Ms. Meredith Reuben

Bugbee, Sylvia

From: Meredith Reuben [mreuben@easternbag.com]
Sent: Monday, August 30, 2004 2:01 PM
To: Bugbee, Sylvia
Subject: RE: Final Draft for review and comments

Sylvia, I have no additional comments. Meredith Reuben

-----Original Message-----

From: Bugbee, Sylvia [mailto:Sylvia.Bugbee@po.state.ct.us]
Sent: Monday, August 30, 2004 8:38 AM
To: Thomas Larsen; Amalia Vazquez-Bzdyra; Andrew Roraback; Ann Rose Morello (Lt. Col. Lukowski's asst.); Barbara Waters; Christopher Morano; Donald Shubert; Dr. Fred McKinney; Gareth Bye (Marc Ryan's designee); Hugh Cox; James O'Rourke; John Pavia; Kevin Johnston; Livvy Floren; Lt. Col. Gerald Lukowski; Lynn Blackwell; Marc Ryan; Mary Alice Hughes (Rep. O'Rourke's asst.); Meredith Reuben; Michael O'Brien; Neil Beup (Oz Griebel's asst.); Oz Griebel; Pasquale Pepe; Philip Koeniger; Rachel Rubin; Richard Belden; Robert Jaekle; Rosemary Budlong (Chris Morano's asst.); Stephen Korta
Cc: Senator DeFronzo; Anthony Lazzaro - OPM 2nd designee; Curtis, Raeanne V; Fleming, James T; Hart, Holly; Heap, Marjorie; Holmes, Jonathan; Jim Boice; Jim Passier, DAS Designee; John Russotto (Co-chair designee for Chris Morano); Mallory, Shane; Moore, Doug; Nancy Laraia (Jim Boice's assistant); Nichols, Ann; Ohearn, David; Paul Murray (Co-chair designee for Chris Morano); Bugbee, Sylvia
Subject: Final Draft for review and comments

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Sylvia Bugbee, Executive Secretary
Office of the Deputy Commissioner
Department of Public Works
165 Capitol Ave., Room 473B
Hartford, CT 06106
TEL: (860) 713-5854 FAX: (860) 713-5255

Commissioner Barbara Waters

Bugbee, Sylvia

From: Barbara Waters [Barbara.Waters@po.state.ct.us]
Sent: Monday, August 30, 2004 5:48 PM
To: Jim.passier; Barbara; Fleming, James T; Donald.DeFronzo@po.state.ct.us
Cc: Bugbee, Sylvia; Nichols, Ann; Maureen Friedman; Carol; Martin
Subject: Re:

Bureaucracy will hamstring the creativity of state employees who are trying to make a positive difference and may put the State at a legal disadvantage -----Original Message-----

From: "Jim Passier" <Jim.Passier@po.state.ct.us>
Date: Mon, 30 Aug 2004 21:39:02
To: "Barbara Waters" <barbara.waters@po.state.ct.us>, james.fleming@po.state.ct.us, "Donald.DeFronzo@po.state.ct.us" <Donald.DeFronzo@po.state.ct.us>
Cc: sylvia.bugbee@po.state.ct.us, ann.nichols@po.state.ct.us, "Maureen Friedman" <maureen.friedman@po.state.ct.us>, "Jim Passier" <Jim.Passier@po.state.ct.us>, "Carol Wilson" <carol.wilson@po.state.ct.us>, "Martin Anderson" <Martin.Anderson@po.state.ct.us>
Subject: Re:

We need to be careful that the protest review does not become more bureaucratic than the process it is intended to replace. -----Original Message-----

From: Barbara Waters <Barbara.Waters@po.state.ct.us>
Date: Mon, 30 Aug 2004 15:35:13
To: james.fleming@po.state.ct.us, "Donald.DeFronzo@po.state.ct.us" <Donald.DeFronzo@po.state.ct.us>
Cc: sylvia.bugbee@po.state.ct.us, ann.nichols@po.state.ct.us, Maureen Friedman <Maureen.Friedman@po.state.ct.us>, Jim Passier <Jim.Passier@po.state.ct.us>, Carol Wilson <Carol.Wilson@po.state.ct.us>, Martin Anderson <Martin.Anderson@po.state.ct.us>

Here are some comments that I received from the AG's office in regards to the review board awarding damages:

Not knowing exactly what the review board's role is proposed to be, I have sovereign immunity and UAPA (due process) concerns about that. We need to avoid compromising sovereign immunity. In addition, I would hope that any due process rights that we may afford vendors DO NOT include requiring formal hearings. That would be, in my opinion, a huge and unnecessary step which would gobble up monstrous amount of time. The current Protest Conference procedure works fine and is minimally disruptive of State business. There was a DOT hearing that took years to resolve.

BlackBerry service provided by Nextel

BlackBerry service provided by Nextel

Bugbee, Sylvia

From: Jim Passier [Jim.Passier@po.state.ct.us]
Sent: Monday, August 30, 2004 5:39 PM
To: Barbara Waters; Fleming, James T; Donald.DeFronzo@po.state.ct.us
Cc: Bugbee, Sylvia; Nichols, Ann; Maureen Friedman; Jim Passier; Carol Wilson; Martin Anderson
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Cc: sylvia.bugbee@po.state.ct.us, ann.nichols@po.state.ct.us, Maureen Friedman
<Maureen.Friedman@po.state.ct.us>, Jim Passier <Jim.Passier@po.state.ct.us>,
Carol Wilson <Carol.Wilson@po.state.ct.us>, Martin Anderson
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BlackBerry service provided by Nextel

Bugbee, Sylvia

From: Martin Anderson [Martin.Anderson@po.state.ct.us]
Sent: Monday, August 30, 2004 4:18 PM
To: Barbara Waters
Cc: Nichols, Ann; Carol Wilson; Donald.DeFronzo@po.state.ct.us; Fleming, James T; Jim Passier; jose.salinas@po.state.ct.us; Bugbee, Sylvia
Subject: Re: Fw: Final Draft for review and comments

I just had a chat with a couple of my DAS colleagues on my privatization language, below. My language on privatization in the public sector might fit in with most anybody's definition but I think there may be types of "privatization" that could easily be outside of what the task force intended for this board/office to cover for standard setting. For example, if DOT decides to stop doing the snow plowing at a state hospital and the state hospital needs to contract with someone else to get their parking lot cleared, is that privatization for the purposes of the standards this board/office would try to cover? If an agency wants to get out of a business (e.g., baking bread) and now the former customers buy off the grocery shelves, is that privatization, too? It's a term (and for some, an emotional term) that needs to be well-defined or this board/office may have to cover a whole host of practices nobody intended for them to cover. I'd be happy to help someone hammer out the words.

Martin W. Anderson, Ph.D.
 Director, Strategic Resources Management
 CT Department of Administrative Services
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Barbara Waters/DAS/STATE

08/30/2004 02:57 PM

To james.fleming@po.state.ct.us, Donald.DeFronzo@po.state.ct.us
 <Donald.DeFronzo@po.state.ct.us>
 sylvia.bugbee@po.state.ct.us, ann.nichols@po.state.ct.us, Martin
 cc Anderson/DAS/STATE@CT, Carol Wilson/DAS/STATE@CT, Jim
 Passier/DAS/STATE@CT, jose.salinas@po.state.ct.us

Subject Fw: Final Draft for review and comments

THANKS!

----- Forwarded by Barbara Waters/DAS/STATE on 08/30/2004 02:49 PM -----

Martin Anderson/DAS/STATE

To Carol Wilson/DAS/STATE@CT

9/1/04

08/30/2004 02:44 PM

Barbara Waters/DAS/STATE@CT, Jim Passier/DAS/STATE@CT, Maureen
cc Friedman/DAS/STATE@CT, Meg Yetishefsky/DAS/STATE@CT

Subject Re: Fw: Final Draft for review and comments [Link](#)

I wonder how training for procurement personnel and persons wanting to do business with the state turned into a whole "training institute". Many of the "institute" recommendations can be pared down ... particularly those that are lectures on how adults learn or how much technology there is out there to support it. I agree with Martin....we already have a Procurement Learning Center that could coordinate all of this. We have trainers and an extensive automated database of vendors, state contracting folks, municipal purchasing staff, etc. No need for another body to do this.

Also, on the "board/office" being a body that can do protest review and appeal duties, do we really want to say "Appeals, if valid, may be acknowledged with some form of compensation?" Again I agree with Martin....from a legal perspective (AG's office) I believe that this (awarding damages) is something that would have to be done in concert with them I'd like to be silent on this language

The privatization part is too fuzzy for me. For example, isn't nearly every contract for a service the privatization of something the state could do if it had the people, expertise, desire, etc? Maybe I'm having trouble with it because nobody defined what privatization means for the purpose of the document. Do they mean "replacing work currently being performed by one or more state workers by a private contractor or service?" If so, I think that (or their definition) should be clearly stated. Otherwise, anybody could call nearly anything being contracted "privatization". **Could be problematic. For DAS we contract for hundreds of services that could be done by the state if we wanted to staff them up. We need a very clear definition of what we are talking about here. MARTIN: Are you suggesting your language as a replacement? It works for me**

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9/1/04

Bugbee, Sylvia

From: Barbara Waters [Barbara.Waters@po.state.ct.us]
Sent: Monday, August 30, 2004 2:48 PM
To: Fleming, James T; Donald.DeFronzo@po.state.ct.us
Cc: Bugbee, Sylvia; Nichols, Ann; Jim Passier; Carol Wilson; Meg Yetishefsky; Maureen Friedman; Martin Anderson
Subject: Comments

Page 20 (Ethics Section) – One of the recommendations was to have guidelines to restrict relationships between State Officials and Contractors, specifically "State employees should be prohibited from hiring or doing business with a person or business that holds a contract with the employee's state agency;".

This poses a huge problem, if incorporated into policy, as many of the DAS contracts include retail based suppliers. Employees couldn't go to buy John Deere tractor parts, couldn't go to Office Depot, couldn't purchase from Walmart or Bob's Stores, couldn't purchase from Grainger, couldn't use many of the CT landscaping companies for lawncare or snowplowing, etc. They couldn't buy a car from Crowley Ford. If they wanted to move they couldn't use any of the reputable moving firms that do business with the state. We believe this needs to be eliminated. We have over 2000 vendors that we deal with.....this is totally unfair to state employees. There has to be a better way to get at this. I recommend getting it out of here until we can get a better handle on it.

Page 19 (Ethics Section) – Recommendation indicates that "State employees and public officials involved in the contract award or negotiations must file an affidavit disclosing any gifts offered and/or received (including meals), their communications, and meetings held with potential vendors.

While we agree with disclosing gift offers and meals, our business includes regular and routine communications with suppliers to educate ourselves on product availability, capabilities, service requirements and other critical information to knowing the industry. There is a wealth of info on the critical role of supplier relationships. In fact we expect and require DAS contract specialists to have current knowledge of the industry and projected trends. We will make a major mistake if we make communications so onerous that no one dares to call a supplier. Documenting all communications would be a difficult, possibly cumbersome and burdensome process to implement. See email to Lisa and Rachel on supplier relationship best practices listed below:

[Link](#)

Single Purchasing Portal (left out the following. It is important to us to get greater volumetric discounts

- Encourage municipalities to participate, on a voluntary basis, in the epartners program.

9/1/04

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RECOMMENDATIONS

The Task Force recommends the following:

Disclosure:

Concerning contractor campaign contribution and gift reporting

- The gift affidavits that are currently filed by potential contractors, as part of the RFP process, must also include a list of all campaign contributions, including contributions to political action committees and party committees. The affidavit should also include a listing of all meals provided, including all meals that are subject to the gift exemptions (i.e. meals valued over \$10 but under \$50). Thereafter, the successful contractor must file periodic reports detailing such gifts and contributions that were made subsequent to the initial disclosure. Such reports will be filed during each year of the term of the contract, as well as one final report a year thereafter; and
- Consider lowering the affidavit filing threshold for contractors.

Public Official and State Employee Gift and Meeting Reporting

- State employees and public officials substantially involved in the contract award or negotiations should file a financial disclosure statement with their agency to ensure that there is no possibility of financial gain or conflict of interest as a result of participating in the contract award; and
- State employees and public officials involved in the contract award or negotiations must file an affidavit disclosing any gifts offered and/or received (including meals), their communications, and meetings held with potential vendors.

Lobbyist Disclosure of Activities

- Administrative lobbyists should include on their lobbyist financial disclosure reports, a list of the agencies they lobby, as well as the subject matter of the administrative lobbying activity (including contract bids).

State Agency Contract Bid and Award Records

- State agencies need to maintain complete and open records of the process used to award a contract, including the agenda, list of participants, and minutes of all meetings. The selection panel should have established written criteria for the selection process. After the award is made, the selection panel should have available, written documentation explaining the rankings and reasons for selecting the successful bidder, as well as an explanation of why the unsuccessful bidder was not selected. Such records shall be open to disclosure under the Freedom of Information Act;
- State agencies should keep a record of any contact with individuals or entities involved in the RFP process, including the creation and writing of the RFP and the specifications, as well as the name of any individual that contacts the agency in an attempt to influence the procurement process. (See Executive Order of Governor of New York). Such record shall be open to disclosure under the Freedom of Information Act; and
- State agencies should institute procedures to ensure that no contractor or potential contractor should be advantaged by receiving information that is not available to (or is not provided to) all other competitors.

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*Culture shift:**Accountability for State Managers*

- The State Code of Ethics should provide consequences for those who counsel, authorize or otherwise sanction violations of the Ethics Code (Proposed House Bill 5156-2003 legislative session);
- The State Code of Ethics should require senior management to report suspected violations of the Ethics Code to the State Ethics Commission;
- Promoting ethical behavior in the workplace should be an important criterion in a manager's annual evaluation and an essential factor to qualify for receiving merit increases and promotions;
- Exemplary "ethical role models" should be featured in agency newsletters and public ceremonies;
- Managers must ensure that all employees they supervise understand the ethics and contracting rules; and
- Managers must strive to maintain a workplace environment that encourages discussion of ethics issues without fear of reprisal and must fully support any ethics investigations when called upon.

Guidelines to Restrict Relationships between State Officials and Contractors

- The post-employment restrictions should be expanded to former public officials/state employees who negotiate a covered contract or agreement but resign before it is signed. These individuals should be prohibited from taking any job with the contractor within one year of resigning from state service if they resign less than one year after the contract is signed or they stopped participating in the negotiations. Quasi-public agency directors and members should also be prohibited from seeking or taking any job with the contractor within one year after they cease substantial participation in the negotiations or the contract is signed. (See House Bill 5155);
- State agencies should be prohibited from requesting "gifts to the state" from contractors currently seeking to do business with the agency;
- State employees should be prohibited from hiring or doing business with a person or business that holds a contract with the employee's state agency;
- State employees and public officials should not accept any meals from any person currently doing business with or seeking to do business with the employee's state agency. (Currently, the gift law allows meals up to \$50 per person per calendar year); and
- All contracts should contain a clause which states that the contractor is aware of, understands, and agrees to comply with the State Code of Ethics, the Business Code of Ethics, and understands that failure to comply can result in termination of the contract. Contractors will be responsible for reimbursing the state for any costs incurred by the state as a result of such termination, delay in completion of the project, and/or the necessity to hire an alternate contractor.

*Heighten contractor accountability:**Develop a Code of Ethics for State Contractors*

- Prohibit those doing business or seeking to do business with the state from providing gifts, including services and other benefits (as defined in the State Code of Ethics for Public Officials) and for paying for meals incident to meetings held with state employees and public officials. This gift prohibition should be extended to certain family members (i.e. spouse, dependent children);
- Require contractors doing business with the state to file periodic reports listing all "gifts to the State", meals, or other benefits provided to state employees and public officials;
- Prohibit contractors from hiring state employees and public officials in violation of the state post-employment rules;